

# HOUSE BILL REPORT

## HB 3312

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**As Reported by House Committee On:**  
Environmental Health, Select

**Title:** An act relating to an exemption for manufacturers of biological remediation technologies for use in on-site sewage disposal systems.

**Brief Description:** Regarding biological remediation technologies for on-site sewage disposal systems.

**Sponsors:** Representative Chase.

**Brief History:**

**Committee Activity:**

Select Committee on Environmental Health: 2/5/08 [DPS].

### Brief Summary of Substitute Bill

- Authorizes use of biological remediation technology in failed drainfields of on-site sewage disposal systems.
- Authorizes use of biological remediation technology in preventing clogged infiltrative surfaces when an on-site sewage disposal systems is not in a state of failure.
- Requires manufacturers of biological remediation technologies to provide documentation to the local health jurisdiction that there has been verified performance of the technology.
- Requires the Board of Health to adopt rules for: (1) verification of biological remediation products performance; and (2) use of products in failing on-site sewage disposal systems.

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**HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Campbell, Chair; Sump, Ranking Minority Member; Chase, Hunt, Morrell and Wood.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hudgins, Vice Chair; and Newhouse.

**Staff:** Ashley Pedersen (786-7303).

**Background:**

The Department of Health (DOH) protects public health by promoting the safe treatment and disposal of domestic and other non-industrial wastewater in areas of Washington not served by municipal sewage treatment works. Rules and standards have been adopted to prevent, control, and abate health hazards and nuisances related to the disposal of wastes, including on-site sewage disposal systems. The DOH regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage disposal systems.

The DOH develops standards and guidance to assist local health officers in permitting different types of sewage treatment and distribution technologies, including public domain treatment technologies, proprietary treatment products, public domain distribution technologies, and proprietary distribution products. Manufacturers of proprietary treatment products must register their product with the DOH before the local health officer may permit their use. To qualify for product registration, manufacturers must meet several requirements, including verifying product performance through testing, and reporting test results.

The DOH does not currently recognize any testing protocol for use in the repair or recovery of failed drainfields of on-site sewage disposal systems.

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**Summary of Substitute Bill:**

**Biological Remediation Technology**

Biological remediation technology may be used in the recovery of failed drainfields of on-site sewage disposal systems. In addition, biological remediation technology may be used for the purpose of preventing clogged infiltrative surfaces when an on-site sewage disposal system is not in a state of failure.

Biological remediation is a process that uses microorganisms to return a contaminated environment, including a drainfield or soil dispersal component, to a state of nonfailure. Biological remediation can also involve a process that uses microorganisms to sufficiently increase the infiltration rate through and into the soil below the infiltrative surface of a clogged infiltrative surface on-site sewage disposal system.

If an on-site sewage disposal system with a biological remediation product does not remedy a clogged infiltrative surface within three months, the local health jurisdiction must require system repairs to meet on-site sewage disposal system requirements as found in chapter 246-

272A of the WAC. If the product fails to make significant improvements and certain conditions are found, the on-site professional who installed the biological remediation device must reimburse the purchaser for the direct cost of the product and installation.

### **Authorized Installers of Biological Remediation Products**

The following individuals are authorized to install biological remediation products:

- on-site wastewater treatment system designers licensed under Chapter 18.210 of the RCW;
- installers approved by the local health officer to install on-site sewage disposal systems or components; and
- professional engineers licensed under law.

In addition, when an on-site sewage disposal system is not in a state of failure, licensed on-site wastewater treatment system operation and maintenance professionals are authorized to install biological remediation products.

### **Manufacturers Must Verify Product Performance**

Manufacturers of biological remediation technologies must provide documentation to the local health jurisdiction that there has been verified performance of the technology. Product performance must be verified through:

- product testing by International Association of Plumbing and Mechanical Officials guide criteria standard 180-2003, or an equivalent standard; or
- product testing by testing facility conforming with the American National Standards Institute requirements.

In addition, manufacturers of biological remediation technologies are not required to register their proprietary treatment products with the DOH if the product performance is verified and the following conditions are met:

- the biological component of the product meets the conditions of statute relating to additive regulation;
- the biological remediation technology is used solely for the purpose of remedying or fixing a clogged infiltrative surface in a failed on-site sewage disposal system; and
- third-party field testing, conducted through the American National Standards Institute, University testing data, or a DOH approved entity, showing remediation of a failed drainfield within 90 days.

The requirement that manufacturers must verify product performance expires on the earlier of either July 1, 2010, or the effective date of rules adopted by the Board of Health (BOH).

### **Board of Health Must Adopt Rules**

By July 1, 2010, the BOH must adopt rules for verification of biological remediation products performance and for use of products in failing on-site sewage disposal systems. Products used

for installation in on-site sewage disposal systems not in a state of failure must be on the state list of approved biological remediation products by July 1, 2010.

The rules must set requirements for (1) monitoring of on-site sewage disposal systems using biological remediation technology; and (2) annual inspection of systems with biological remediation technologies installed. In addition, the rules must set forth a fee schedule to cover the cost of implementing a verification and certification program for biological remediation products.

### **Permitting by Local Health Jurisdiction**

When an on-site sewage disposal systems is in a state of failure, a local health jurisdiction may issue a permit. When an on-site sewage disposal system is not in a state of failure, a permit is not required for the installation or use of biological remediation devices. However, a local health jurisdiction may require no fee registration for tracking purposes and charge a reasonable fee. Each no fee permit must include:

- inspection, monitoring, and maintenance requirements;
- a plan with a time frame for correcting any public health concern and the means to protect public health until the concern is addressed;
- a plan for operation and maintenance that is filed with the local health jurisdiction;
- a schedule for maintenance and operation reports;
- a contract with the owner of the on-site sewage disposal system with a biological remediation product for inspection and monitoring by a certified inspector or local health officer; and
- information for the owner of an on-site sewage disposal system with a biological remediation product.

Prior to issuing a no fee permit for a biological remediation product, the local health officer or on-site wastewater treatment system designer licensed under law must perform an assessment. The assessment must take into account: (1) site and effluent-specific characteristics of the on-site sewage disposal system; and (2) whether the biological remediation technology will adversely impact the environment or public health by increased wastewater flows. Purchasers of biological remediation devices for use in on-site sewage disposal systems not in a state of failure must maintain an operation and maintenance contract with a licensed on-site professional. Local health jurisdiction may require yearly reporting of data collected from an operation and maintenance inspection by a licensed on-site professional.

Each no-fee permit must include a signed document from the homeowner allowing the local health officer to enter the property to determine if a biological remediation product has remedied a failed drainfield.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- removes the requirement that the biological remediation technology product must continue its certification with the appropriate listing entity;
- allows third-party field testing to be from within or outside of the state;
- removes "licensed septic pumper" and "other professional licensed by the local health jurisdiction" from the list of those authorized to install biological remediation products for on-site sewage disposal systems not in a state of failure;
- requires purchasers of biological remediation devices for use in on-site sewage disposal systems not in a state of failure to maintain an operation and maintenance contract with a licensed on-site professional;
- allows local health jurisdiction to require yearly reporting of data collected from an operation and maintenance inspection by a licensed on-site professional;
- requires biological remediation products used for installation in on-site sewage disposal systems not in a state of failure to qualify under the requirements established in section 3 the bill;
- requires that products used for installation in on-site sewage disposal systems not in a state of failure be on the state list of approved biological remediation products by July 1, 2010;
- provides that biological remediation products that are approved for use may be installed without a permit in systems not in a state of failure;
- removes the requirement that the State Board of Health report to the Legislature by July 1, 2009;
- removes the requirement that the rules adopted by the State Board of Health must stipulate certain requirements for permitting, certification, continued use and removal of products;
- requires each no-fee permit to include a signed document from the homeowner allowing the local health officer to enter the property for the purpose of determining if a biological remediation product has remedied a failed drainfield and certain other provisions; and
- requires that the on-site professional who installed the biological remediation device shall reimburse the purchaser for the direct cost of the product and installation if the product fails to make significant improvements and certain conditions are found.

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**Appropriation:** None.

**Fiscal Note:** Available. Requested on substitute on February 5, 2008.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This technology is an important product that can be used to improve the water quality in the state. This technology repairs failing and clogged septic systems. It is an important tool because some people will ignore a failing septic system in order to avoid the substantial cost of traditional septic system repairs. Traditional septic system repairs cost

typically \$15,000 to \$20,000 for a small system, the biological remediation technology is a more affordable option for people and costs about \$5,000 to \$6,000. It is time to get this technology into the hands of consumers. The details of this legislation have been worked though with the Department of Health and the Department of Ecology and different interest groups to be as inclusive as possible. As far as fees go, while it is important that local jurisdictions manage the costs associated with permitting, if we have a technology that will protect Puget Sound, we should be careful about putting fees in place that would stop lower income people from using the technology.

(With concerns) While the proposed substitute is a big improvement to the bill and addresses many concerns, it is premature to move this bill forward. While the new technology is promising, we do not know how to apply the technology at the local level. We do not know how the technology can best be used for on-site system. We have concerns that in on-site systems near shorelines, or situated in poor or excessively drained soils, clearing up the clogged septic systems may present environmental problems. Until we have more information it is difficult to know how to permit the technology. Fast-forwarding the rule-making process is a better way to move forward with this issue. Any exemption dates should be tied to the rule-making process. In addition, consumers may not be adequately protected if they purchase and install a system that is not successful. It may be appropriate to require a permit for use of the technology in septic systems that are not in a state of failure. There should be an amendment to the bill so that local health jurisdictions are not stripped of existing authority to charge certain fees.

(Opposed) None.

**Persons Testifying:** (In support) Representative Chase, prime sponsor; Ezra Eickmeyer, Sludgehammer and Infiltrator Systems; Evan Price, Blue Heron Bakery; Ken Morse, NET Septic; and John Eremic.

(With concerns) Craig McLaughlin, State Board of Health; Art Starry, Washington State Association of Local Public Health Officials, Washington State Environmental Health Directors; Melodie Selby, Department of Ecology; and Bruce Wishart, People for Puget Sound.

**Persons Signed In To Testify But Not Testifying:** None.